

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

HOUSE ENROLLED ACT No. 1143

AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 4-4-10.9-6.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.2. (a) "Educational facility project" includes:

(1) the acquisition of land, site improvements, infrastructure improvements, buildings, or structures, the rehabilitation, renovation, and enlargement of buildings and structures, machinery, equipment, furnishings, or facilities (or any combination of these):

(1) (A) comprising or being functionally related and subordinate to any aquaria, botanical societies, historical societies, libraries, museums, performing arts associations or societies, scientific societies, zoological societies, and independent elementary, secondary, or postsecondary schools (or any combination of these) that engages in the cultural, intellectual, scientific, educational, or artistic enrichment of the people of the state the development or expansion of which serves the purposes set forth in IC 4-4-11-2;

(2) (B) is not used or to be used primarily for sectarian instruction or study or as a place for devotional activities; and

(3) (C) is not used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination; **or**

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(2) funding (including reimbursement or refinancing) by a nonprofit organization described in subsection (b) of:

- (A) real property and improvements;**
- (B) personal property; or**
- (C) noncapital costs to fund a judgment, a settlement, or other cost or liability, other than an ordinary and recurring operating cost or expenditure.**

(b) For purposes of subsection (a)(2), a nonprofit organization must be:

- (1) qualified as tax exempt under Section 501(c)(3) of the Internal Revenue Code; and**
- (2) have headquarters or a primary educational or exhibit facility located on property owned by or titled in the name of the state of Indiana or an agency, a commission, or an instrumentality of the state of Indiana that serves the purposes set forth in IC 4-4-11-2.**

SECTION 2. IC 4-4-11-2, AS AMENDED BY P.L.273-1999, SECTION 195, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The legislature makes the following findings of fact:

- (1) That there currently exists in certain areas of the state critical conditions of unemployment or environmental pollution, including water pollution, air pollution, sewage and solid waste, radioactive waste, thermal pollution, radiation contamination, and noise pollution, and that these conditions may well exist, from time to time, in other areas of the state.
- (2) That in some areas of the state such conditions are chronic and of long standing and that without remedial measures they may become so in other areas of the state.
- (3) That economic insecurity due to unemployment or environmental pollution is a menace to the health, safety, morals, and general welfare of not only the people of the affected areas but of the people of the entire state.
- (4) That involuntary unemployment and its resulting burden of indigency falls with crushing force upon the unemployed worker and ultimately upon the state in the form of public assistance and unemployment compensation.
- (5) That security against unemployment and the resulting spread of indigency and economic stagnation in the areas affected can best be provided by:
 - (A) the promotion, attraction, stimulation, rehabilitation, and revitalization of industrial development projects, rural



development projects, mining operations, and agricultural operations that involve the processing of agricultural products; (B) the promotion and stimulation of international exports; and (C) the education, both formal and informal, of people of all ages throughout the state by the promotion, attraction, construction, renovation, rehabilitation, and revitalization of **and assistance to** educational facility projects.

(6) That the present and prospective health, safety, morals, right to gainful employment, and general welfare of the people of the state require as a public purpose the abatement or control of pollution, the promotion of increased educational enrichment (including cultural, intellectual, scientific, or artistic opportunities) for people of all ages through new, expanded, or revitalized educational facility projects **or through assisting educational facility projects**, and the promotion of employment creation or retention through development of new and expanded industrial development projects, rural development projects, mining operations, and agricultural operations that involve the processing of agricultural products.

(7) That there is a need to stimulate a larger flow of private investment funds from commercial banks, investment bankers, insurance companies, other financial institutions, and individuals into such industrial development projects, rural development projects, mining operations, international exports, and agricultural operations that involve the processing of agricultural products in the state.

(8) That the authority can encourage the making of loans or leases for creation or expansion of industrial development projects, rural development projects, mining operations, international exports, and agricultural operations that involve the processing of agricultural products, thus putting a larger portion of the private capital available in Indiana for investment to use in the general economic development of the state.

(9) That the issuance of bonds of the authority to create a financing pool for industrial development projects promoting a substantial likelihood of opportunities for:

- (A) gainful employment;
- (B) business opportunities;
- (C) educational enrichment (including cultural, intellectual, scientific, or artistic opportunities);
- (D) the abatement, reduction, or prevention of pollution;
- (E) the removal or treatment of any substances in materials

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being processed that otherwise would cause pollution when used; or

(F) increased options for and availability of child care; will improve the health, safety, morals, and general welfare of the people of the state and constitutes a public purpose for which the authority shall exist and operate.

(10) That the issuance of bonds of the authority to create a funding source for the making of guaranteed participating loans will promote and encourage an expanding international exports market and international exports sales and will promote the general welfare of all of the people of Indiana by assisting Indiana businesses through stimulation of the expansion of international exports sales for Indiana products and services, especially those of small and medium-sized businesses, by providing financial assistance through the authority.

(b) The Indiana development finance authority shall exist and operate for the public purposes of:

(1) promoting opportunities for gainful employment and business opportunities by the promotion and development of industrial development projects, rural development projects, mining operations, international exports, and agricultural operations that involve the processing of agricultural products, in any areas of the state;

(2) promoting the educational enrichment (including cultural, intellectual, scientific, or artistic opportunities) of all the people of the state by the promotion, ~~and~~ development, **and assistance** of educational facility projects;

(3) promoting affordable farm credit and agricultural loan financing at interest rates that are consistent with the needs of borrowers for farming and agricultural enterprises;

(4) preventing and remediating environmental pollution, including water pollution, air pollution, sewage and solid waste disposal, radioactive waste, thermal pollution, radiation contamination, and noise pollution affecting the health and well being of the people of the state by the promotion and development of industrial development projects; and

(5) promoting affordable and accessible child care for the people of the state by the promotion and development of child care facilities.

SECTION 3. IC 4-4-11-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) The authority is granted all powers necessary or appropriate to carry out and

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effectuate its public and corporate purposes under this chapter, IC 4-4-21, and IC 15-7-5, including but not limited to the following:

- (1) Have perpetual succession as a body politic and corporate and an independent instrumentality exercising essential public functions.
- (2) Without complying with IC 4-22-2, adopt, amend, and repeal bylaws, rules, and regulations not inconsistent with this chapter, IC 4-4-21, and IC 15-7-5 and necessary or convenient to regulate its affairs and to carry into effect the powers, duties, and purposes of the authority and conduct its business.
- (3) Sue and be sued in its own name.
- (4) Have an official seal and alter it at will.
- (5) Maintain an office or offices at a place or places within the state as it may designate.
- (6) Make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this chapter, IC 4-4-21, and IC 15-7-5.
- (7) Employ architects, engineers, attorneys, inspectors, accountants, agriculture experts, silviculture experts, aquaculture experts, and financial experts, and such other advisors, consultants, and agents as may be necessary in its judgment and to fix their compensation.
- (8) Procure insurance against any loss in connection with its property and other assets, including loans and loan notes in amounts and from insurers as it may consider advisable.
- (9) Borrow money, make guaranties, issue bonds, and otherwise incur indebtedness for any of the authority's purposes, and issue debentures, notes, or other evidences of indebtedness, whether secured or unsecured, to any person, as provided by this chapter, IC 4-4-21, and IC 15-7-5.
- (10) Procure insurance or guaranties from any public or private entities, including any department, agency, or instrumentality of the United States, for payment of any bonds issued by the authority or for reinsurance on amounts paid from the industrial development project guaranty fund, including the power to pay premiums on any insurance or reinsurance.
- (11) Purchase, receive, take by grant, gift, devise, bequest, or otherwise, and accept, from any source, aid or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of this chapter, IC 4-4-21, and IC 15-7-5, subject to the conditions upon which the grants or

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contributions are made, including but not limited to gifts or grants from any department, agency, or instrumentality of the United States, and lease or otherwise acquire, own, hold, improve, employ, use, and otherwise deal in and with real or personal property or any interest in real or personal property, wherever situated, for any purpose consistent with this chapter, IC 4-4-21, or IC 15-7-5.

(12) Enter into agreements with any department, agency, or instrumentality of the United States or this state and with lenders and enter into loan agreements, sales contracts, and leases with contracting parties, including borrowers, lenders, developers, or users, for the purpose of planning, regulating, and providing for the financing and refinancing of any agricultural enterprise (as defined in IC 15-7-4.9-2), rural development project (as defined in IC 15-7-4.9-19.5), industrial development project, or international exports, and distribute data and information concerning the encouragement and improvement of agricultural enterprises and agricultural employment, rural development projects, industrial development projects, international exports, and other types of employment in the state undertaken with the assistance of the authority under this chapter.

(13) Enter into contracts or agreements with lenders and lessors for the servicing and processing of loans and leases pursuant to this chapter, IC 4-4-21, and IC 15-7-5.

(14) Provide technical assistance to local public bodies and to profit and nonprofit entities in the development or operation of agricultural enterprises, rural development projects, and industrial development projects.

(15) To the extent permitted under its contract with the holders of the bonds of the authority, consent to any modification with respect to the rate of interest, time, and payment of any installment of principal or interest, or any other term of any contract, loan, loan note, loan note commitment, contract, lease, or agreement of any kind to which the authority is a party.

(16) To the extent permitted under its contract with the holders of bonds of the authority, enter into contracts with any lender containing provisions enabling it to reduce the rental or carrying charges to persons unable to pay the regular schedule of charges when, by reason of other income or payment by any department, agency, or instrumentality of the United States of America or of this state, the reduction can be made without jeopardizing the economic stability of the agricultural enterprise, rural

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development project, or industrial development project being financed.

(17) Invest any funds not needed for immediate disbursement, including any funds held in reserve, in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States, obligations issued by agencies of the United States, obligations of this state, or any obligations or securities which may from time to time be legally purchased by governmental subdivisions of this state pursuant to IC 5-13, or any obligations or securities which are permitted investments for bond proceeds or any construction, debt service, or reserve funds secured under the trust indenture or resolution pursuant to which bonds are issued.

(18) Collect fees and charges, as the authority determines to be reasonable, in connection with its loans, guarantees, advances, insurance, commitments, and servicing.

(19) Cooperate and exchange services, personnel, and information with any federal, state, or local government agency, or instrumentality of the United States or this state.

(20) Sell, at public or private sale, with or without public bidding, any loan or other obligation held by the authority.

(21) Enter into agreements concerning, and acquire, hold, and dispose by any lawful means, land or interests in land, building improvements, structures, personal property, franchises, patents, accounts receivable, loans, assignments, guarantees, and insurance needed for the purposes of this chapter, IC 4-4-21, or IC 15-7-5.

(22) Take assignments of accounts receivable, loans, guarantees, insurance, notes, mortgages, security agreements securing notes, and other forms of security, attach, seize, or take title by foreclosure or conveyance to any industrial development project when a guaranteed loan thereon is clearly in default and when in the opinion of the authority such acquisition is necessary to safeguard the industrial development project guaranty fund, and sell, or on a temporary basis, lease, or rent such industrial development project for any use.

(23) Expend money, as the authority considers appropriate, from the industrial development project guaranty fund created by section 16 of this chapter.

(24) Purchase, lease as lessee, construct, remodel, rebuild, enlarge, or substantially improve industrial development projects, including land, machinery, equipment, or any combination

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thereof.

(25) Lease industrial development projects to users or developers, with or without an option to purchase.

(26) Sell industrial development projects to users or developers, for consideration to be paid in installments or otherwise.

(27) Make direct loans from the proceeds of the bonds to users or developers for:

(A) the cost of acquisition, construction, or installation of industrial development projects, including land, machinery, equipment, or any combination thereof; **or**

(B) eligible expenditures for an educational facility project described in IC 4-4-10.9-6.2(a)(2);

with the loans to be secured by the pledge of one (1) or more bonds, notes, warrants, or other secured or unsecured debt obligations of the users or developers.

(28) Lend or deposit the proceeds of bonds to or with a lender for the purpose of furnishing funds to such lender to be used for making a loan to a developer or user for the financing of industrial development projects under this chapter.

(29) Enter into agreements with users or developers to allow the users or developers, directly or as agents for the authority, to wholly or partially construct industrial development projects to be leased from or to be acquired by the authority.

(30) Establish reserves from the proceeds of the sale of bonds, other funds, or both, in the amount determined to be necessary by the authority to secure the payment of the principal and interest on the bonds.

(31) Adopt rules governing its activities authorized under this chapter, IC 4-4-21, and IC 15-7-5.

(32) Use the proceeds of bonds to make guaranteed participating loans.

(33) Purchase, discount, sell, and negotiate, with or without guaranty, notes and other evidences of indebtedness.

(34) Sell and guarantee securities.

(35) Make guaranteed participating loans under IC 4-4-21-26.

(36) Procure insurance to guarantee, insure, coinsure, and reinsure against political and commercial risk of loss, and any other insurance the authority considers necessary, including insurance to secure the payment of principal and interest on notes or other obligations of the authority.

(37) Provide performance bond guarantees to support eligible export loan transactions, subject to the terms of this chapter or

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IC 4-4-21.

(38) Provide financial counseling services to Indiana exporters.

(39) Accept gifts, grants, or loans from, and enter into contracts or other transactions with, any federal or state agency, municipality, private organization, or other source.

(40) Sell, convey, lease, exchange, transfer, or otherwise dispose of property or any interest in property, wherever the property is located.

(41) Cooperate with other public and private organizations to promote export trade activities in Indiana.

(42) Make guarantees and administer the agricultural loan and rural development project guarantee fund established by IC 15-7-5.

(43) Take assignments of notes and mortgages and security agreements securing notes and other forms of security, and attach, seize, or take title by foreclosure or conveyance to any agricultural enterprise or rural development project when a guaranteed loan to the enterprise or rural development project is clearly in default and when in the opinion of the authority the acquisition is necessary to safeguard the agricultural loan and rural development project guarantee fund, and sell, or on a temporary basis, lease or rent the agricultural enterprise or rural development project for any use.

(44) Expend money, as the authority considers appropriate, from the agricultural loan and rural development project guarantee fund created by IC 15-7-5-19.5.

(45) Reimburse from bond proceeds expenditures for industrial development projects under this chapter.

(46) Do any act necessary or convenient to the exercise of the powers granted by this chapter, IC 4-4-21, or IC 15-7-5, or reasonably implied from those statutes, including but not limited to compliance with requirements of federal law imposed from time to time for the issuance of bonds.

(b) The authority's powers under this chapter shall be interpreted broadly to effectuate the purposes of this chapter and may not be construed as a limitation of powers.

(c) This chapter does not authorize the financing of industrial development projects for a developer unless any written agreement that may exist between the developer and the user at the time of the bond resolution is fully disclosed to and approved by the authority.

SECTION 4. IC 4-4-11-17, AS AMENDED BY P.L.273-1999, SECTION 196, IS AMENDED TO READ AS FOLLOWS

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[EFFECTIVE UPON PASSAGE]: Sec. 17. (a) The authority may enter into negotiations with one (1) or more persons concerning the terms and conditions of financing agreements for industrial development projects. The authority shall consider whether a proposed industrial development project may have an adverse competitive effect on similar industrial development projects already constructed or operating in the local governmental unit where the industrial development project will be located. Preliminary expenses in connection with negotiations under this section may be paid from:

- (1) money furnished by the proposed user or developer;
- (2) money made available by the state or federal government, or by any of their departments or agencies; or
- (3) money of the authority, exclusive of the industrial development project guaranty fund.

(b) The authority shall prepare a report that:

- (1) briefly describes the proposed industrial development project;
- (2) estimates the number and expense of public works or services that would be made necessary or desirable by the proposed industrial development project, including public ways, schools, water, sewers, street lights, and fire protection;
- (3) estimates the total costs of the proposed industrial development project;
- (4) for an industrial development project that is not exclusively either a pollution control facility or an educational facility project, estimates the number of jobs and the payroll to be created or saved by the project;
- (5) for pollution control facilities, describes the facilities and how they will abate, reduce, or prevent pollution;
- (6) for educational facility projects, describes ~~the facilities and~~ how the ~~facilities promote~~ **project promotes** the educational enrichment (including cultural, intellectual, scientific, or artistic opportunities) of the people of the state; and
- (7) for child care facility projects, describes the facilities and how the facilities promote accessibility to and increased options for child care for the people of the state.

The report shall be submitted to the executive director or chairman of the plan commission, if any, having jurisdiction over the industrial development project and, if the number of new jobs estimated exceeds one hundred (100), to the superintendent of the school corporation where the industrial development project will be located. The executive director or chairman of the plan commission and the school superintendent may formulate their written comments concerning the



report and transmit their comments, if any, to the authority within five (5) days from the receipt of the report.

(c) The authority shall hold a public hearing, which may be conducted by the authority, or any officer, member, or agent designated thereby, on the proposed financing agreement for the industrial development project, after giving notice by publication in one (1) newspaper of general circulation in the city, town, or county where the industrial development project is to be located at least ten (10) days in advance of this public hearing.

(d) If the authority finds that the industrial development project will be of benefit to the health, safety, morals, and general welfare of the area where the industrial development project is to be located, and complies with the purposes and provisions of this chapter, it may by resolution approve the proposed financing agreement. This resolution may also authorize the issuance of bonds payable solely from revenues and receipts derived from the financing agreement or from payments made under an agreement to guarantee obligations of the developer, a user, a related person, or the authority by a developer, a user, a related person thereto, or the authority pursuant to the industrial development project guaranty fund. The bonds are not in any respect a general obligation of the state, nor are they payable in any manner from revenues raised by taxation.

(e) A financing agreement approved under this section must provide for payments in an amount sufficient to pay the principal of, premium, if any, and interest on the bonds authorized for the financing of the industrial development project. However, interest payments for the anticipated construction period, plus a period of not more than one (1) year, may be funded in the bond issue. The term of a financing agreement may not exceed fifty (50) years from the date of any bonds issued under the financing agreement. However, a financing agreement does not terminate after fifty (50) years if a default under that financing agreement remains uncured, unless the termination is authorized by the terms of the financing agreement. If the authority retains an interest in the industrial development project, the financing agreement must require the user or the developer to pay all costs of maintenance, repair, taxes, assessments, insurance premiums, trustee's fees, and any other expenses relating to the industrial development projects, so that the authority will not incur any expenses on account of the industrial development projects other than those that are covered by the payments provided for in the financing agreement.

SECTION 5. An emergency is declared for this act.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana

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